

# The Gazette of India

## EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

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### LOK SABHA

The following Bills were introduced in Lok Sabha on the 16th November, 1962:—

#### \*BILL No. 105 of 1962

*A bill further to amend the Gift-tax Act, 1958.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gift-tax (Amendment) Act, 1962. Short title and commencement.  
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

18 of 1958.

2. In section 2 of the Gift-tax Act, 1958 (hereinafter referred to as the principal Act),— Amendment of section 2.

(a) for clauses (ii), (iii) and (iv), the following clauses shall be substituted, namely:—

10       “(i) “Appellate Tribunal” means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

(iii) “assessee” means a person by whom gift-tax or any other sum of money is payable under this Act and includes—

15       (a) every person in respect of whom any proceeding under this Act has been taken for the determination of gift-tax payable by him or by any other person or the amount of refund due to him or such other person;

(b) every person who is deemed to be an assessee under this Act;

20       (c) every person who is deemed to be an assessee in default under this Act;

(iv) “assessment” includes re-assessment;

(iva) “assessment year” means the period of twelve months commencing on the 1st day of April, every year;”

\*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, uncommanded to Lok Sabha, the introduction and consideration of the Bill.

(b) after clause (v), the following clause shall be inserted, namely:—

‘(va) “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit;’;

(c) after clause (vii), the following clause shall be inserted, namely:—

‘(viiia) “Director of Inspection” includes an Additional Director of Inspection, a Deputy Director of Inspection and an Assistant Director of Inspection;’;

(d) for clause (xiv), the following clause shall be substituted, namely:—

‘(xiv) “Income-tax Act” means the Income-tax Act, 1961;’;

15 43 of 1961.

(e) after clause (xvi), the following clauses shall be inserted, namely:—

‘(xviiia) “Inspector of Gift-tax” means an Inspector of Income-tax empowered to work as an Inspector of Gift-tax under section 11;’;

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‘(xviiib) “legal representative” has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;’;

5 of 1903.

(f) in clause (xx)—

(i) in sub-clause (b), for the words, brackets, letters and figures “under sub-clause (a) of clause (11) of section 2 of the Income-tax Act or such period determined as the previous year under sub-clause (b) of clause (11) of that section, whichever expired last”, the words, brackets, letters and figures “under sub-clause (a) or sub-clause (b), as the case may be, of sub-section (1) of section 3 of the Income-tax Act or such period determined as the previous year under clause (c) of that sub-section, whichever expired last” shall be substituted;

(ii) in sub-clause (c), for the words, brackets and figures “clause (11) of section 2”, the word and figure “section 3” shall be substituted.

Amendment  
of section 3.

3. In section 3 of the principal Act, for the words “financial year”, the words “assessment year” shall be substituted.

4. In section 5 of the principal Act,—

(i) in sub-section (1), in clause (v), for the word, figures and letter "section 15B", the word and figures "section 88" shall be substituted;

5 (ii) in the *Explanation*, in clause (a), for the words "in the taxable territories within the meaning of the Income-tax Act", the following shall be substituted, namely:—

10 "within the meaning of section 6 of the Income-tax Act, subject to the modification that references in that section to India shall be construed as references to the territories to which this Act extends".

5. After section 7 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 7A.

15 "7A. (1) Notwithstanding anything contained in section 7, the Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one Gift-tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Gift-tax Officer to another: Power to transfer cases.

20 Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Gift-tax Officer to another whose offices are situated in the same city, locality or place.

25 (2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Gift-tax Officer from whom the case is transferred.

30 *Explanation.*—In this section the word 'case' in relation to any person whose name is specified in any order issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order, or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year."

35 6. After section 9 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 9A.

"9A. (1) The Board may empower as many persons as it thinks fit to exercise under this Act the functions of a Director of Inspection. Discretion of Inspection.

(2) A Director of Inspection shall be competent to make any enquiry under this Act and for this purpose, shall have all the powers that a Gift-tax Officer has under this Act in relation to the making of enquiries. 5

(3) Without prejudice to the provisions of sub-section (2), a Director of Inspection shall exercise such other functions of any Gift-tax authority as may be assigned to him by the Board."

Substitution of new section for section 11.

7. For section 11 of the principal Act, the following sections shall be substituted, namely:—

10

Inspector of Gift-tax.

'11. A Commissioner of Gift-tax may empower any Inspector of Income-tax to work as an Inspector of Gift-tax under any Gift-tax authority, and when he is so empowered, he shall perform such functions in the execution of this Act as are assigned to him by the said Gift-tax authority. 15

Control of Gift-tax authorities.

11A. (1) Inspecting Assistant Commissioners shall be subordinate to the Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(2) Gift-tax Officers shall be subordinate to the Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(3) Inspectors of Gift-tax shall be subordinate to the Gift-tax Officers or other Gift-tax authority under whom they are empowered to work and to any other Gift-tax authority to whom the said officer or other authority is subordinate. 25

*Explanation.*—For the purposes of sub-section (1), "Director of Inspection" does not include a Deputy Director of Inspection or an Assistant Director of Inspection and for the purposes of sub-section (2), "Director of Inspection" does not include an Assistant Director of Inspection. 30

Amendment of section 12.

8. Section 12 of the principal Act shall be re-numbered as sub-section (1) thereof and after the sub-section so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Every Gift-tax Officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions." 35

9. In Chapter III of the principal Act, after section 12, the following section shall be inserted, namely:—

Insertion  
of new  
section  
12A.

5 "12A. The Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax shall be competent to make any enquiry under this Act and for this purpose, shall have all the powers that a Gift-tax Officer has under this Act in relation to the making of enquiries."

Power of  
Commis-  
sioner of  
Gift-tax  
and of  
Inspecting  
Assistant  
Commis-  
sioner of  
Gift-tax  
to make  
enquiries  
under this  
Act.

10. In section 13 of the principal Act,—

Amend-  
ment of  
section 13.

10 (i) in sub-section (1), after the words "taxable gifts", the words "or is assessable in respect of the taxable gifts made by any other person under this Act" shall be inserted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

15 " (2) In the case of any person who, in the Gift-tax Officer's opinion, is assessable under this Act whether in respect of the gifts made by him or by any other person during the previous year, the Gift-tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish within thirty days from the date of service of the notice a return of the gifts made by 20 him or by such other person during the previous year in the prescribed manner and setting forth such other particulars as may be prescribed."

25 11. After section 14 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new sec-  
tion 14A.

"14A. The return made under section 13 or section 14 shall be signed and verified—

Return by  
whom to  
be signed.

30 (a) in the case of an individual, by the individual himself; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

35 (b) in the case of a Hindu undivided family, by the Karta, and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or by some person competent to act on his behalf."

Amend-  
ment of  
section 15.

12. In section 15 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "is complete", the words "is correct and complete" shall be substituted;

(b) for the words "and determine the amount payable by him as gift-tax", the words "and determine the amount of gift-tax payable by him or the amount refundable to him on the basis of such return" shall be substituted;

(ii) in sub-section (3), after the words "any specified points", the words "and after taking into account all relevant material which the Gift-tax Officer has gathered" shall be inserted;

(iii) in sub-section (5), after the words "the Gift-tax Officer", the words "after taking into account all relevant material which he has gathered" shall be inserted.

Amend-  
ment of  
section 16.

13. In section 16 of the principal Act, in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

"(a) has reason to believe that by reason of the omission or failure on the part of the assessee to make a return under section 13 of the gifts made by him or any other person in respect of which he is assessable under this Act for any assessment year, or to disclose fully and truly all material facts necessary for assessment of the gifts made by him or such other person for that year any taxable gift has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or".

Substitu-  
tion of new  
section for  
section 17.

Penalty  
for failure  
to furnish  
returns to  
comply  
with  
notices and  
conceal-  
ment of  
gifts, etc.

14. For section 17 of the principal Act, the following section shall be substituted, namely:—

"17. (1) If the Gift-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return required to be furnished under sub-section (1) of section 13 or by notice given under sub-section (2) of section 13 or section 16 or has, without reasonable cause, failed

to furnish it within the time allowed and in the manner required by sub-section (1) of section 13 or by such notice, as the case may be, or

(b) has without reasonable cause failed to comply with a notice under sub-section (2) or sub-section (4) of section 15; or

(c) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof, he or it may, by order in writing, direct that such person shall pay by way of penalty—

(i) in the cases referred to in clause (a), in addition to the amount of gift-tax payable by him, a sum equal to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax;

(ii) in the cases referred to in clause (b), in addition to the amount of gift-tax payable by him, a sum which shall not be less than ten per cent. but which shall not exceed fifty per cent. of the amount of the tax, if any, which would have been avoided if the return made by such person had been accepted as correct;

(iii) in the cases referred to in clause (c), in addition to any gift-tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one and half times the amount of the tax, if any, which would have been avoided if the return made by such person had been accepted as correct.

(2) No order imposing a penalty under sub-section (1) shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

(3) Notwithstanding anything contained in clause (iii) of sub-section (1), if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Gift-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this section for the imposition of penalty.

(4) An Appellate Assistant Commissioner, Commissioner or the Appellate Tribunal, on making an order under this section imposing penalty, shall forthwith send a copy of the same to the Gift-tax Officer."

Insertion  
of new sec-  
tion 19A.

15. After section 19 of the principal Act, the following section shall be inserted, namely:—

Assessment  
of persons  
leaving  
India.

“19A. (1) Notwithstanding anything contained in section 3, when it appears to the Gift-tax Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the gifts made by such individual during the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India, shall be chargeable to gift-tax in that assessment year. 10

(2) The taxable gifts made in each completed previous year or part of any previous year included in such period shall be chargeable to gift-tax at the rate or rates specified in the Schedule, and separate assessments shall be made in respect of each such completed previous year or part of any previous year. 15

(3) The Gift-tax Officer may estimate the value of the gifts made by such individual during such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the Gift-tax Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 13, giving particulars of the gifts made by him during each completed previous year comprised in the period referred to in sub-section (1) and during any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under sub-section (2) of section 13. 20 25 30

(5) The gift-tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the Gift-tax Officer under sub-section (2) of section 13 or under section 16 in respect of any gift-tax chargeable under any other provisions of this Act may, notwithstanding anything contained in sub-section (2) of section 13 or section 16, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Gift-tax Officer may think proper.” 35 40

16. In Chapter V of the principal Act, after section 21, the following section shall be inserted, namely:—

Insertion  
of new  
section 21A.

5 “21A. (1) Where a Gift-tax Officer after using all due and reasonable diligence cannot find the donor who has made any taxable gifts, for the purpose of service of notice under sub-  
10 section (2) of section 13 or under section 16, the Gift-tax Officer may make an assessment of the value of all such taxable gifts made by him and determine the gift-tax payable by him and for this purpose may, by the issue of the appropriate notice which  
15 would have had to be served upon the donor, require from the donee or donees any accounts, documents or other evidence which might, under the provisions of section 15, have been required from the donor.

Assess-  
ment of  
donee  
when  
donor can-  
not be  
found.

15 (2) Where any assessment in respect of the taxable gifts made by the donor has been made under sub-section (1), every donee shall be liable for the gift-tax so assessed:

Provided that where the donees are more than one, they shall be jointly and severally liable for the amount of the gift-tax so assessed:

20 Provided further that the amount of the gift-tax which may be recovered from each donee shall not exceed the value of the gift made to him as on the date of the gift.

(3) The provisions of sections 13, 14 and 16 shall apply to a donee as they apply to any person referred to in those sections.”

25 17. In section 22 of the principal Act,—

Amend-  
ment of  
section 22.

(i) in sub-section (1)—

(a) in clause (a), the word “his” shall be omitted;

(b) in clause (f)—

30 (1) for the words, brackets and figures “sub-section (1) of section 46 of the Income-tax Act”, the words, brackets and figures “sub-section (1) of section 221 of the Income-tax Act” shall be substituted;

(2) the word “or” shall be added at the end;

35 (c) after clause (f), the following clauses shall be inserted, namely:—

“(g) objecting to an order of the Gift-tax Officer under section 34 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under that section;

40 or

(h) objecting to any fine imposed by the Gift-tax Officer under sub-section (2) of section 36;";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(5A) In disposing of an appeal, the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant. 5 10

(5B) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision."

Amend-  
ment of  
section 23.

18. In section 23 of the principal Act,—

15

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) An assessee, objecting to an order passed by the Appellate Assistant Commissioner under section 17 or section 22 or sub-section (2) of section 36 or to an order passed by the Inspecting Assistant Commissioner under sub-section (3) of section 17, may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him."; 20

(ii) after sub-section (2), the following sub-section shall be inserted, namely:— 25

"(2A) The Gift-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1) or sub-section (2)."; 30 35

(iii) for sub-section (3), the following sub-section shall be substituted, namely:—

5 “(3) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (2) or sub-section (2A) if it is satisfied that there was sufficient cause for not presenting it within that period.”;

10 (iv) in sub-section (11), for the words, brackets, figures and letter “sub-sections (5), (7) and (8) of section 5A of the Income-tax Act”, the words, brackets and figures “sub-sections (1), (4) and (5) of section 255 of the Income-tax Act” shall be substituted.

19. In section 24 of the principal Act, to sub-section (3), the following *Explanation* shall be added, namely:— Amend-  
ment of  
section 24.

15 “*Explanation.*—In computing the period of limitation for purposes of this sub-section, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 38 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”.

20

20. In section 25 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— Amend-  
ment of  
section 25.

25 “(1) An assessee objecting to an order passed by the Commissioner under section 17 or to an order of enhancement passed by him under section 24 may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.”.

21. In section 26 of the principal Act,—

30 (i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:— Amend-  
ment of  
section 26.

35 “(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 23 or section 25, by application in the prescribed form, accompanied, where the application is made by the assessee, by a fee of rupees one hundred require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

40

(2) The Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period specified in sub-section (1), allow it to be presented within a further period not exceeding thirty days.”;

5

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) If, on an application made under this section, the Appellate Tribunal is of the opinion that on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.”;

(iii) in sub-sections (4), (5) and (6), after the words “High Court”, the words “or the Supreme Court” shall be inserted;

(iv) for sub-sections (7), (8) and (9), the following sub-section shall be substituted, namely:—

“(7) The cost of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.”.

Insertion  
of new  
sections  
28A and  
28B.

22. In Chapter VI of the principal Act, after section 28, the following sections shall be inserted, namely:—

Tax to be  
paid not-  
withstand-  
ing refer-  
ence, etc.

‘28A. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

Definition  
of High  
Court.

28B. In this Chapter, “High Court” means—

- (i) in relation to any State, the High Court of that State;
- (ii) in relation to the Union territories of Delhi and Himachal Pradesh, the High Court of Punjab;
- (iii) in relation to the Union territories of Manipur and Tripura, the High Court of Assam;
- (iv) in relation to the Union territory of Andaman and Nicobar Islands, the High Court at Calcutta;
- (v) in relation to the Union territory of Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala.’.

35

23. For section 29 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 29

5 "29. Subject to the provisions of this Act, gift-tax shall be payable by the donor but when in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee:

Gift-tax by whom payable.

Provided that where the donees are more than one, they shall be jointly and severally liable for the amount of tax determined to be payable by the donor:

10 Provided further that the amount of tax which may be recovered from each donee shall not exceed the value of the gift made to him as on the date of the gift."

24. For sections 31, 32 and 33 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 31, 32 and 33.

15 "31. When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Gift-tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

Notice of demand.

20 32. (1) Any amount specified as payable in a notice of demand under section 31 shall be paid within thirty-five days of the service of the notice at the place and to the person mentioned in the notice:

Recovery of tax and penalties.

25 Provided that, where the Gift-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty-five days aforesaid, as may be specified by him in the notice of demand.

30 (2) If the amount specified in any notice of demand under section 31 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at four per cent. per annum from the day commencing after the end of the period mentioned in sub-section (1).

35 (3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Gift-tax Officer may extend the time for payment or allow payment by instalments subject to such conditions as he may think fit to impose  
40 in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where the assessee has presented an appeal under section 22, the Gift-tax Officer may in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired as long as such appeal remains undisposed of.

Mode of  
recovery.

33. The provisions contained in sections 221 to 227, 229, 231 and 232 of the Income-tax Act and the Second and Third Schedules to that Act and any rules made thereunder shall, so far as may be, apply as if the said provisions were provisions of this Act and referred to gift-tax and sums imposed by way of penalty, fine and interest under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under that Act and to Gift-tax Officer and Commissioner of Gift-tax instead of to Income-tax Officer and Commissioner of Income-tax.

*Explanation I.*—Any reference to sub-section (2) or sub-section (6) of section 220 of the Income-tax Act in the said provisions of that Act or the rules made thereunder shall be construed as references to sub-sections (2) and (6) respectively of section 32 of this Act.

*Explanation II.*—The Tax Recovery Officer and the Tax Recovery Commissioner referred to in the Income-tax Act or the rules made thereunder shall be deemed to be the Tax Recovery Officer and the Tax Recovery Commissioner for the purposes of recovery of gift-tax and sums imposed by way of penalty, fine and interest under this Act".

25. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion  
of new  
Chapter  
VIII.

## “CHAPTER VIII

### REFUNDS

5           33A. (1) Where, as a result of any order passed in appeal or Refunds.  
other proceeding under this Act, refund of any amount becomes  
due to the assessee the Gift-tax Officer shall, except as otherwise  
provided in this Act, refund the amount to the assessee without  
his having to make any claim in that behalf.

10           (2) Where an order giving rise to a refund is the subject  
matter of an appeal or further proceeding or where any other  
proceeding under this Act is pending, and the Gift-tax Officer is  
of the opinion that the grant of refund is likely to adversely  
15           affect the revenue, the Gift-tax Officer may, with the previous  
approval of the Commissioner withhold the refund till such time  
as the Commissioner may determine.

          (3) Where a refund is due to the assessee in pursuance of  
an order referred to in sub-section (1) and the Gift-tax Officer  
does not grant the refund within a period of six months from  
20           the date of such order, the Central Government shall pay to the  
assessee simple interest at four per cent. per annum on the  
amount of refund due from the date immediately following the  
expiry of the period of six months aforesaid to the date on which  
the refund is granted.

25           (4) Where a refund is withheld under the provisions of sub-  
section (2), the Central Government shall pay interest at the  
aforesaid rate on the amount of refund ultimately determined to  
be due as a result of the appeal or further proceedings for a period  
commencing after the expiry of six months from the date of the  
30           order referred to in that sub-section to the date the refund is  
granted.

          (5) Where under any of the provisions of this Act, a refund  
is found to be due to any person, the Gift-tax Officer, Appellate  
Assistant Commissioner or Commissioner, as the case may be,  
35           may, in lieu of payment of the refund, set off the amount to be  
refunded or any part of that amount, against the sum, if any,  
remaining payable under this Act by the person to whom the  
refund is due, after giving an intimation in writing to such person  
of the action proposed to be taken under this section.”

Substitution of new section for section 34.

26. For section 34 of the principal Act, the following section shall be substituted, namely:—

Rectification of mistakes.

“34. (1) With a view to rectifying any mistake apparent from the record—

(a) the Gift-tax Officer may amend any order of assessment or of refund or any other order passed by him;

(b) the Appellate Assistant Commissioner may amend any order passed by him under sub-section (1) of section 17 or under section 22;

(c) the Inspecting Assistant Commissioner may amend any order passed by him under sub-section (3) of section 17;

(d) the Commissioner may amend any order passed by him under sub-section (1) of section 17 or under section 24;

(e) the Appellate Tribunal may amend any order passed by it under sub-section (1) of section 17 or section 23 or section 25.

(2) Subject to other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion; and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Appellate Assistant Commissioner or the Appellate Tribunal by the Gift-tax Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the Gift-tax authority concerned.

(5) Subject to the provisions of sub-section (2) of section 33, where any such amendment has the effect of reducing the assessment, the Gift-tax Officer shall make any refund which may be due to such assessee,

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Gift-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 31 and the provisions of this Act shall apply accordingly.

(7) No amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended."

27. In section 35 of the principal Act,—

Amend-  
ment of  
section 35.

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any gifts chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall, on conviction before a Magistrate, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both;"

(ii) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

"*Explanation*.—For the purposes of this section, 'Magistrate' means a Presidency Magistrate or a Magistrate of the first class."

28. For section 36 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new  
section for  
section 36.

"36. (1) The Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Power  
regarding  
discovery,  
production  
of evi-  
dence, etc.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summons is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or 5 document at the place or time, the authority empowered to issue such summons may impose upon him such fine not exceeding five hundred rupees as it thinks fit, and fine so levied may be recovered in the manner provided in Chapter VII.”.

Amend-  
ment of  
section 38.

29. To section 38 of the principal Act, the following proviso shall 10 be added, namely:—

“Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.”. 15

Substitu-  
tion of new  
section for  
section 39.

30. For section 39 of the principal Act, the following section shall be substituted, namely:—

Computa-  
tion of  
period of  
limitation.

“39. In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and if the assessee was not 20 furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.”.

Amend-  
ment of  
section 40.

31. In section 40 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:— 25

“(3) After a finding of total partition has been recorded by the Gift-tax Officer under section 20 in respect of any Hindu family, notices under this Act in respect of the gifts made by the family shall be served on the person who was the last manager of the Hindu family, or if such person is dead, then on all sur- 30 viving adults who were members of the Hindu family immediately before the partition.

(4) Where a firm or other association of persons is dissolved, notices under this Act in respect of the gifts made by the firm or association may be served on any person who was a partner 35 (not being a minor) or member of the association, as the case may be, immediately before its dissolution.”.

32. For section 41 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 41.

“41. The provisions of sections 137 and 280 of the Income-tax Act shall apply to the disclosure of particulars contained in all  
5 accounts or in relation to statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of any proceedings under this Act, as they apply to or in relation to similar particulars under that Act, subject to the modification that the reference to any income-tax authority in  
10 clause (iv) of sub-section (3) of section 137 of that Act shall be construed as a reference to any Gift-tax authority.”

Prohibition of disclosure of information.

33. In section 41A of the principal Act, in sub-section (3), after clause (i), the following clause shall be inserted, namely:—

Amendment of section 41A.

“(ia) in the case of an assessee mentioned in clause (a) of  
15 sub-section (1) or in clause (b) of sub-section (2), who presented an appeal under sub-section (1) of section 23 against the order of penalty passed by the Inspecting Assistant Commissioner under sub-section (3) of section 17, until the appeal is disposed of by the Appellate Tribunal;”

20 34. For section 43 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 43.

“43. An assessee who is entitled to or required to attend  
before any Gift-tax authority or the Appellate Tribunal in connection with any proceeding under this Act, except where he is  
25 required under this Act to attend in person, may attend by a person who would be entitled to represent him before any Income-tax authority or the Appellate Tribunal under section 288 of the Income-tax Act.”

Appearance before Gift-tax authorities by authorised representatives.

30 35. In section 45 of the principal Act, in clause (e), for the words, brackets and figures “clause (i) of sub-section (3) of section 4”, the word and figure “section 11” shall be substituted.

Amendment of section 45.

36. In section 46 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

Amendment of section 46.

“ (4) The Central Government shall cause every rule made  
35 under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if, before the expiry of the session in which it is so laid or the session immediately following, both  
40 Houses agree in making any modifications in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of any-  
45 thing previously done under that rule.”

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**STATEMENT OF OBJECTS AND REASONS**

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The Income-tax law has been recodified in the Income-tax Act, 1961. As the basic pattern of the Gift-tax law is the same as that of the Income-tax law, it has become necessary to bring the provisions of the Gift-tax Act, 1958 in line with the scheme of the Income-tax Act, 1961.

It has also been found necessary to introduce certain changes in the provisions of the Gift-tax Act to meet the problems which have arisen in the working of the Act. The changes which are independent of those made as a result of the recodification of the Income-tax Act, 1961 are as follows:—

(1) Under the existing law gift-tax assessment proceedings can be taken against the donor only, the donee being liable to pay the tax after the liability has been determined and the amount of tax is found incapable of recovery from the donor. It is proposed to make the donee also liable, where the donor cannot be found, for the assessment and payment of tax in respect of a gift subject to the limitation that the tax payable by the donee shall not exceed the value of the gift received by him.

(2) Under the existing law the donees are liable to pay the tax determined as payable by the donor if it cannot be recovered from the donor. This liability is subject to the limitation of proportionate amount of tax on the value of gift received by the donee. It is proposed to amend the existing provision by limiting the liability of the donee to the extent of the value of the gift received by him as on the date of the gift.

(3) The absence of any power with the Commissioner of Gift-tax and the Central Board of Revenue to transfer the case of a gift-tax assessee without simultaneously transferring his income-tax case from one Gift-tax Officer to another has caused considerable administrative difficulties. With a view to removing these difficulties it is proposed to invest these authorities with power to transfer a case from one Gift-tax Officer to another.

The present Bill seeks to secure the above objectives.

The Notes on Clauses explain in detail the various provisions of the Bill.

**NEW DELHI;**

*The 7th November, 1962.*

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*Notes on Clauses*

*Clause 2(a).*—This clause substitutes the existing clauses (ii), (iii) and (iv) of section 2 by new clauses.

(i) New clause (ii) brings the definition of “Appellate Tribunal” in line with the definition of the term in section 2(4) of the Income-tax Act, 1961.

(ii) New clause (iii) corresponds to section 2(iii) of the existing Act, but the definition of “assessee” has been made more comprehensive on the lines of section 2(7) of the Income-tax Act, 1961 so as to include all possible categories, e.g., persons who are themselves liable to pay tax on gifts made by them, persons liable to pay tax on gifts made by other persons and persons deemed under certain sections of the Act to be assesseees or assesseees in default.

(iii) A definition of “assessment” has been inserted on the lines of section 2(8) of the Income-tax Act, 1961.

(iv) It brings the definition of ‘assessment year’ in line with its definition as given in section 2(9) of the Income-tax Act, 1961.

*Clause 2(b).*—A definition of “charitable purpose” has been inserted on the lines of section 2(15) of the Income-tax Act, 1961.

*Clause 2(c).*—Director of Inspection is not one of the authorities under the existing Act. This clause has been inserted to make the Director of Inspection an authority under the Act and to clarify that the term includes his deputies and assistants also.

*Clause 2(d).*—Reference to the “Income-tax Act, 1922” has been substituted by reference to the “Income-tax Act, 1961”.

*Clause 2(e).*—Two new clauses (xvii) and (xviii) have been inserted in section 2 of the Act.

(i) A definition of “Inspector of Gift-tax” has been given as he has been made one of the authorities under the Act.

(ii) The term “legal representative” has been defined on the lines of section 2(29) of the Income-tax Act, 1961 as in the existing Act there is no definition of this term although it is used in the Act.

*Clause 2(f).*—In the definition of the term “previous year” references to the provisions of the Income-tax Act, 1922 have been substituted by references to the corresponding sections of the Income-tax Act, 1961.

*Clause 3.*—Since the term “assessment year” has been defined in the Act, the words “every financial year” have been replaced by the

words "every assessment year" to clarify the intention. This brings the provisions in line with section 4 of the Income-tax Act, 1961.

*Clause 4—*

*Sub-clause (i).—*In section 5(1) (v) reference to section 15B of the Income-tax Act, 1922 has been substituted by reference to the corresponding provision of the Income-tax Act, 1961.

*Sub-clause (ii).—*This clause seeks to bring the provisions regarding residence in line with the provisions of the Income-tax Act, 1961, while making allowance for the fact that the Gift-tax Act does not apply to the whole of India.

*Clause 5.—*This clause introduces a new section conferring on the Central Board of Revenue and the Commissioner power to transfer cases from one Gift-tax Officer to another.

*Clause 6.—*This clause introduces a new section which authorises the Board to empower persons to exercise the functions of a Director of Inspection and defines those functions.

*Clause 7.—*By this clause a new section 11 has been inserted which makes an Inspector of Gift-tax as an authority under the Act. The new section 11A substitutes the existing section 11 and is in line with section 118 of the Income-tax Act, 1961.

*Clause 8.—*This clause introduces a new provision on the lines of section 119(2) of the Income-tax Act, 1961 making it obligatory on the Gift-tax Officer to follow the instructions issued by the Director of Inspection, Commissioner and the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.

*Clause 9.—*This clause introduces a new section conferring on the Commissioner and the Inspecting Assistant Commissioner powers similar to those conferred under section 135 of the Income-tax Act, 1961 on like authorities for making enquiries.

*Clause 10.—*This clause amends section 13 of the existing Act on the lines of section 139 of the Income-tax Act, 1961. It has been made clear that the provisions of section 13, apart from applying to a person who has made a gift, also apply to a person who is assessable in respect of a gift made by any other person.

*Clause 11.—*This clause introduces a new section which is intended to state comprehensively the position as regards the persons who should sign and verify returns of gifts in respect of the various kinds of assessees. It is modelled on section 140 of the Income-tax Act, 1961.

*Clause 12.—*This clause makes certain drafting changes in section 15 of the Act to bring out that the amount of refund, if any, due to the assessee, is specified in the assessment order passed on the basis

of a return found to be correct and complete. Sub-sections (3) and (5) of section 15 have also been amended to make it clear that the Gift-tax Officer shall, in framing an assessment, consider any material which he might have gathered independently. These changes bring the provisions of the section in line with those of sections 143 and 144 of the Income-tax Act, 1961.

*Clause 13.*—This clause makes a drafting change in section 16(i) (a) to clarify that it covers also the case of an assessee who has to file a return in respect of gifts made by another person. It has become necessary as a consequence of the amendment made in section 13.

*Clause 14.*—This clause replaces the existing section 17 by a new section to bring its provisions in line with the corresponding provisions in sections 271 and 274 of the Income-tax Act, 1961. The changes made are:—

(i) In the existing Section 17 maximum penalty only is specified. The new section lays down both the minimum and the maximum penalties for various offences.

(ii) The existing Section requires that the Gift-tax Officer should have previous approval of the Inspecting Assistant Commissioner for all penalty orders passed by him. Under the new provisions the Inspecting Assistant Commissioner himself will pass orders in cases falling under section 17(1) (c) (deliberate concealment of particulars about gifts) where the minimum penalty imposable exceeds rupees one thousand. The need for obtaining previous approval of the Inspecting Assistant Commissioner where penalty order is to be passed by the Gift-tax Officer is dispensed with.

*Clause 15.*—This clause introduces a new provision in the Act to enable the Gift-tax Officer to make assessments in cases where the donor is likely to leave India before the commencement of the assessment year or shortly after it without any intention of returning to India. This follows the corresponding provisions of section 174 of the Income-tax Act, 1961.

*Clause 16.*—This clause introduces a new provision which empowers the Gift-tax Officer to make an assessment on the donees in a case where the donor is not available for assessment. Section 29 of the Act provides that the tax may be recovered from the donee if it cannot be recovered from the donor but there is no provision in the Act enabling the Gift-tax Officer to make an assessment on the donee if the donor cannot be found. The clause seeks to remove this deficiency. The clause also seeks to make the donees jointly and

severally liable for the tax while limiting the liability of a donee to the maximum of the value of the gifts received by him.

*Clause 17—*

*Sub-clause (i) (a).—*By this sub-clause the word 'his' has been omitted from section 22(1) (a) to entitle a donee also to file an appeal where an assessment is made on him.

*Sub-clause (i) (b).—*This sub-clause substitutes reference to section 46(1) of the Income-tax Act, 1922 by reference to the corresponding provisions contained in section 221(1) of the Income-tax Act, 1961.

*Sub-clause (i) (c).—*This sub-clause provides for additional rights of appeal against the Gift-tax Officer's orders rectifying a mistake under section 34 having the effect of enhancing the tax or reducing a refund or refusing to admit an assessee's claim under the section or against an order imposing fine for non-compliance with summons under section 36.

*Sub-clause (ii).—*This sub-clause seeks to make the existing practice a requirement under the law.

The changes mentioned follow the pattern of sections 246, 250(6) and *Explanation* to Section 251 of the Income-tax Act, 1961.

*Clause 18.—*Sub-clause (i) substitutes sub-section (1) of section 23 by a new sub-section on the lines of section 253(1) of the Income-tax Act, 1961. It confers on the assessee additional rights of appeal against an order passed by the Appellate Assistant Commissioner imposing fine under section 36 and against an order passed by the Inspecting Assistant Commissioner imposing penalty under section 17(3) of the Act. The provision for appeal against orders of the Commissioner under section 17 has been incorporated in section 25 which contains similar provisions.

*Sub-clause (ii)* introduces a new provision corresponding to section 253 (4) of the Income-tax Act, 1961 enabling the assessee or the Gift-tax Officer to file a memorandum of cross objections in an appeal filed before the Tribunal by the other party.

*Sub-clause (iii)* confers on the Tribunal power to condone delay in the filing of a memorandum of cross objections. This power is similar to the existing power of the Tribunal to condone delay in filing of appeals, and is in line with section 253 (5) of the Income-tax Act, 1961.

*Sub-clause (iv)* substitutes reference to sub-sections (5), (7) and (8) of section 5A of the Income-tax Act, 1922 by references to the corresponding provisions in sub-sections (1), (4) and (5) of section 255 of the Income-tax Act, 1961.

*Clause 19.*—This clause introduces a new *Explanation* which provides that in computing the limitation period of two years under section 24(3) the time spent in giving a rehearing to the assessee under section 38 or the time for which the proceedings under the section are stayed by a court shall be excluded. This provision is similar to the *Explanation* in section 263 of the Income-tax Act, 1961.

*Clause 20.*—See notes on clause 18.

*Clause 21.*—This sub-clause substitutes existing sub-sections (1) and (2) of section 26 by new sub-sections. Following changes have been made to bring the provisions in line with those of section 256 of the Income-tax Act, 1961:—

(a) The time within which an application should be made to the Tribunal to refer a question of law to the High Court has been reduced from 90 days to 60 days as provided in other direct tax laws.

(b) The Tribunal has been required to dispose of the application within 120 days.

(c) Under the new provision the Tribunal's power to condone delay in entertaining a reference application has been restricted to 30 days.

*Sub-clause (ii)* introduces a new provision similar to that contained in section 257 of the Income-tax Act, 1961 enabling the Tribunal to refer a question of law direct to the Supreme Court if there is a conflict in the decisions of High Courts on that question.

*Sub-clause (iii)* applies the procedural provisions of sub-sections (4), (5) and (6) of section 26 to direct references to the Supreme Court also.

*Sub-clause (iv).*—Sub-sections (7) and (8) of section 26 have been substituted by a new sub-section, modelled on section 260(2) of the Income-tax Act, 1961, to provide that the cost of a reference to the Supreme Court shall be in the discretion of the Court as in the case of a reference to the High Court.

Sub-section (9), having become redundant, has been deleted.

*Clause 22.*—This clause introduces two new sections, viz., sections 28A and 28B. The former, based on section 265 of the Income-tax Act,

1961, provides that tax will be payable as per assessment made notwithstanding that a reference has been made to Courts. The latter, based on section 269 of the Income-tax Act, 1961, provides for a definition of High Court in respect of States as well as Union territories.

*Clause 23.*—This clause substitutes existing section 29 by a new section. The new section while providing for the joint and several liability of the donees for the payment of tax limits the liability of a donee to the value of the gift.

*Clause 24.*—(i) This clause substitutes existing sections 31, 32 and 33 by new sections.

In section 31 interest, fine or any other sum payable under the Act has also been mentioned. Reference to time within which the amount due is to be paid has been omitted as the time for payment is proposed to be prescribed in section 32. The new section is based on section 156 of the Income-tax Act, 1961.

Section 32 has been redrafted to bring its provisions in line with those of section 220 of the Income-tax Act, 1961. The changes made are—

(a) for the sake of simplicity the time limit for payment has been specified as 35 days in normal cases. As a measure of safeguard, it has been provided that this period may be reduced in cases where it will be detrimental to revenue to allow so much time;

(b) it has been provided that the assessee shall be liable to pay simple interest at 4% per annum from the date of expiry of the time specified in the notice of demand;

(c) a specific provision has been made authorising the Gift-tax Officer to extend the time for payment or allow payments by instalments subject to payment of interest at 4% per annum;

(d) it has been made clear that the power to treat an assessee, who has filed an appeal, as being not in default, is confined to the amount in dispute and that the power can be exercised even though the time for payment has expired as long as the appeal remains pending.

(iii) Section 33 has been redrafted to apply the provisions of sections 221 to 227, 229, 231 and 232 of the Income-tax Act, 1961 and Second and Third Schedules to that Act and rules framed under the Second Schedule for recovery of any sums due under the Act. Under the new section a uniform procedure for effecting recovery will be followed in all the States.

*Clause 25.*—This clause introduces a new provision on the lines of Chapter XIX of the Income-tax Act, 1961 requiring that if a refund becomes due to an assessee in appeal, etc., the Gift-tax Officer will refund the amount without the assessee having to make a claim for it. The Gift-tax Officer has been empowered to withhold refund or set it off against any amount due from the assessee in certain circumstances. Provision has also been made for payment of interest @ 4% per annum to the assessee if a refund is not granted within the prescribed period or withheld in certain circumstances.

*Clause 26.*—This clause brings the provisions of section 34 of the Act in line with the corresponding provisions of section 154 of the Income-tax Act, 1961.

*Clause 27.*—This clause introduces a new provision making abetment of evasion an offence punishable with imprisonment and/or fine.

Under the existing provision presidency magistrates, magistrates of the first class and magistrates of the second class, if specially empowered, can take cognisance of offence under the Act. The clause omits specially empowered magistrates of the second class.

These changes are in line with the provisions of sections 278 and 292 of the Income-tax Act, 1961 in section 35 of the Act.

*Clause 28.*—This clause brings the provisions of section 36 in line with the corresponding provisions of section 131 of the Income-tax Act, 1961.

*Clause 29.*—This clause provides that in the event of one gift-tax authority being succeeded by another the assessee may demand that before the proceedings are continued he may be heard again. The provision is the same as in section 129 of the Income-tax Act, 1961.

*Clause 30.*—This clause makes only a drafting change in section 39 to bring out its intention more precisely. The new section is similar to section 268 of the Income-tax Act, 1961.

*Clause 31.*—This clause introduces a new provision on the lines of section 283 of the Income-tax Act, 1961 prescribing the procedure to be adopted for service of notice where a joint Hindu family is disrupted or a firm or other association of persons is dissolved.

*Clause 32.*—This clause substitutes a new section for the existing section 41 which applies the provisions of sections 137 and 280 of the Income-tax Act, 1961 in place of the provisions of section 54 of the Income-tax Act, 1922. The prosecution under the new section for violating its prohibitory provisions will be sanctioned by the Central Government and not by the Commissioner as under the existing provision.

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*Clause 33.*—This clause provides that in a case where the Inspecting Assistant Commissioner passes order levying penalty, the name of the assessee can be published only after the appeal, if any, is disposed of by the Appellate Tribunal. This is in line with section 287(3) of the Income-tax Act, 1961.

*Clauses 34 and 35.*—These clauses are self-explanatory.

*Clause 36.*—This clause proposes to modify the provisions of subsection (4) of section 46 on the lines of section 296 of the Income-tax Act, 1961.

## FINANCIAL MEMORANDUM

The officers who administer the Income-tax Act administer the Gift-tax Act also. This Bill will, therefore, not involve any additional expenditure.

\*BILL No. 104 OF 1962

*A Bill to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith.*

WHEREAS the President has declared by Proclamation under clause (1) of article 352 of the Constitution that a grave emergency exists whereby the security of India is threatened by external aggression;

AND WHEREAS it is expedient to provide for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith;

BE it, therefore, enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,  
extent, app-  
lication, du-  
ration and  
savings.

1. (1) This Act may be called the Defence of India Act, 1962.

(2) It extends to the whole of India and it applies also—

(a) to citizens of India outside India;

(b) to persons in the service of the Government, wherever they may be;

(c) in respect of the regulation and discipline of the naval, military and air forces or any other armed forces of the

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\*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

Union, to members of, and persons attached to, employed with, or following, those forces, wherever they may be;

(d) to, and to persons on, ships and aircraft registered in India, wherever they may be.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for a period of six months thereafter but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "civil defence" includes any measures not amounting to actual combat, for affording defence against any form of hostile attack by a foreign power or for depriving any form of hostile attack by a foreign power of its effect either wholly or in part whether such measures are taken before, during or after the time of the attack;

(b) "Civil Defence Services" mean the services formed wholly or mainly to meet the needs of civil defence;

(c) "enemy" means—

(i) any person or country committing external aggression against India;

(ii) any person belonging to a country committing such aggression;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;

(iv) any person belonging to such other country;

(d) "enemy territory" means—

(i) any area which is under the sovereignty of or administered by, or for the time being in the occupation of, a country referred to in sub-clause (i), or a country referred to in sub-clause (iii), of clause (c) of this section;

(ii) any area which the Central Government may, by notification in the Official Gazette, specify to be enemy territory for the purposes of this Act or any rule made thereunder;

(e) "military operations" mean the operations of the Armed Forces of the Union;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "Proclamation of Emergency" means the Proclamation issued under clause (1) of article 352 of the Constitution on the 26th October, 1962;

(h) "State Government" in relation to a Union territory means the administrator thereof.

## CHAPTER II

### EMERGENCY POWERS

Power to  
make rules.

3. (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely:—

(1) ensuring the safety and welfare of the Armed Forces of the Union, ships and aircrafts and preventing the prosecution of any work likely to prejudice the operations of the Armed Forces of the Union.

(2) prohibiting anything likely to prejudice the training, discipline or health of the Armed Forces of the Union;

(3) preventing any attempt to tamper with the loyalty of persons in, or to dissuade (otherwise than with advice given in good faith to the person dissuaded for his benefit or that of any member of his family or any of his dependents) persons from entering, the service of the Government;

(4) preventing or prohibiting anything likely to assist the enemy or to prejudice the successful conduct of military operations or civil defence including—

(a) communications with the enemy or agents of the enemy;

(b) acquisition, possession without lawful authority or excuse and publication of information likely to assist the enemy;

(c) contribution to, participation or assistance in, the floating of loans raised by or on behalf of the enemy;

(d) advance of money to, or contracts or commercial dealings with the enemy, enemy subjects or persons residing, carrying on business, or being, in enemy territory; and

(e) acts, publications or communications prejudicial to civil defence;

(5) preventing the spreading without lawful authority or excuse of false reports or the prosecution of any purpose, likely to cause disaffection or alarm, or to prejudice India's relations with foreign powers or to prejudice maintenance of peaceful conditions in any area or part of India, or to promote feelings of ill-will, enmity or hatred between different classes of the people of India;

(6) requiring the publication of news and information;

(7) demanding security from any press used for the purpose of printing or publishing any newspaper, news-sheet, book or other document containing matters prejudicial to the defence of India and civil defence, the public safety, the maintenance of public order, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community, the forfeiture of such security and the circumstances in which and the authority by whom such forfeiture may be ordered;

(8) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and the removal of persons from such areas;

(9) requiring any person or class of persons to comply with any scheme of defence or civil defence;

(10) ensuring the safety of—

(a) ports, dockyards, lighthouses, light-ships and aerodromes;

(b) railways, tramways, roads, canals and all other means of transport by land or water;

(c) telegraphs, post offices, signalling apparatus and all other means of communications;

(d) sources and systems of water-supply, works for the supply of water, gas or electricity, and all other works for public purposes;

(e) vessels, aircraft, transport vehicles as defined in the Motor Vehicles Act 1939, and rolling stocks of railways and 4 of 1939. tramways;

(f) warehouses and all other places used or intended to be used for storage purposes;

(g) mines, oil-fields, factories or industrial or commercial undertakings generally, or any mine, oil-field, factory or industrial or commercial undertaking in particular;

(h) laboratories and institutions where scientific or technological research or training is conducted or imparted;

(i) all works and structures being part of, or connected with, anything earlier mentioned in this clause; and

(j) any other place or thing used or intended to be used for the purposes of Government or a local authority or a semi-Government or autonomous organisation, the protection of which is considered necessary or expedient for securing the defence of India and civil defence, the public safety, the public order, or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community;

(11) the demolition, destruction or rendering useless in case of necessity of any building or other premises or any other property;





(12) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals, in ports and territorial, tidal and inland waters;

(13) the control of lights and sounds;

(14) the control of persons entering, travelling in or departing from, India;

(15) notwithstanding anything in any other law for the time being in force,—

(i) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain, as the case may be, suspects, on grounds appearing to that authority to be reasonable, of being of hostile origin or of having acted, acting, being about to act or being likely to act in a manner prejudicial to the defence of India and civil defence, the security of the State, the public safety or interest, the maintenance of public order, India's relations with foreign States, the maintenance of peaceful conditions in any part or area of India or the efficient conduct of military operations, or with respect to whom that authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner,

(ii) the prohibition of such person from entering or residing or remaining in any area; and

(iii) the compelling of such person to reside and remain in any area, or to do or abstain from doing anything;

(16) restricting and regulating the charter of foreign vessels;

(17) regulating the structure and equipment of vessels for the purpose of ensuring the safety thereof and of persons therein;

(18) regulating work in dockyards and shipyards in respect of the construction and repairs of vessels;

(19) prohibiting or regulating the sailings of vessels from ports, traffic at aerodromes and the movement of aircraft, and traffic on railways, tramways and roads, and reserving and requiring to be adapted, for the use of the Government, all or any accommodation in vessels, aircraft, railways, tramways or road vehicles for the carriage of persons, animals or goods;

(20) the impressment of vessels, aircraft, vehicles, and animals for transport;

(21) prohibiting or regulating the use of postal, telegraphic or telephonic services, including the taking possession of such services, and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(22) regulating the delivery otherwise than by postal or telegraphic service of postal articles and telegrams;

(23) the control of trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard to articles or things of any description whatsoever which may be used in connection with the conduct of military operations or civil defence or for maintaining supplies and services essential to the life of the community;

(24) the control of generation, supply, distribution, use or consumption of electrical energy;

(25) the control of agriculture (including the cultivation of agricultural land and crops to be raised therein) for the purpose of increasing the production and supply of foodgrains and other essential agricultural products;

(26) the provision, storage and maintenance of commodities and things required for the conduct of military operations or for the defence of India and civil defence;

(27) the requisition of services of persons for maintaining supplies and services essential to the life of the community;

(28) the provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of military operations or the defence of India and civil defence;

(29) the protection of property by the performance of such fire prevention and other duties as may be allotted to any person;

(30) the securing of any building, premises or other structures from being readily recognisable in the event of a hostile attack by a foreign power;

(31) ensuring the ownership and control of mines and oil-fields by the citizens;

(32) prohibiting, restricting or otherwise regulating the bringing into, or taking out of, India of goods or articles of any description (including coin, bullion, bank notes, currency notes, securities and foreign exchange), and bringing into any part or place in India of any such goods or articles as aforesaid intended

8 of 1878.

to be taken out of India without being removed from the ship, aircraft or other conveyance in which they are being carried, and applying the provisions of the Sea Customs Act, 1878, and in particular section 19 thereof to such prohibitions, restrictions and regulations,

(33) controlling the possession, use or disposal of, or dealing in, coin, bullion, bank notes, currency notes, securities or foreign exchange;

(34) the control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water-supply;

(35) the requisitioning and acquisition of any movable property; and the principles on which and the manner in which compensation shall be determined and given in respect of such requisitioning or acquisition;

(36) prohibiting or regulating the possession, use or disposal of—

(a) explosives, inflammable substances, corrosive and other dangerous substances or articles, arms and ammunition of war;

(b) vessels;

(c) wireless telegraphic apparatus;

(d) aircraft; and

(e) photographic and signalling apparatus and any means of recording information;

(37) prohibiting or regulating the bringing into, or taking out of, India and the possession, use or transmission of ciphers and other secret means of communicating information;

(38) prohibiting or regulating the publication of inventions and designs;

(39) prohibiting or regulating the publication of results of research work having a bearing on efforts relating to defence of India or military operations;

(40) preventing the disclosure of official secrets;

(41) prohibiting or regulating meetings, assemblies, fairs and processions;

(42) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive or to prejudice the public safety, the maintenance of public order, the defence of India and civil defence;

(43) ensuring the accuracy of any report or declaration legally required of any person;

(44) preventing the unauthorized change of names;

(45) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purporting to be, or resembling, an official person, official document or official property;

(46) the precautionary measures which the Government or any department thereof or any local authority, members of police forces and fire brigades and members of any other service or authority employed primarily for purposes other than civil defence purpose should be required to take within their respective jurisdictions or with respect to any personnel employed by them;

(47) the seizure and custody or destruction of injured, unclaimed or dangerous animals;

(48) the salvage of damaged buildings and property and disposal of the dead;

(49) the evacuation of areas and the removal of property or animals therefrom;

(50) the accommodation in any area of persons evacuated from another area and the regulation of the conduct of evacuated persons accommodated in such area;

(51) the billeting of evacuated person or persons authorised to exercise functions under this Act;

(52) the instruction of members of the public in civil defence and their equipment for purposes of civil defence;

(53) the entry into, and search of, and place reasonably suspected of being used for any purpose prejudicial to the public safety or interest, to the defence of India and civil defence or to the efficient conduct of military operations, and for the seizure and disposal of anything found there and reasonably suspected of being used for such purpose;

(54) the preparation of any scheme of defence service or any other service connected with the defence of India and requiring any person or class of persons to comply with such scheme;

32 of 1958.

(55) the eviction of unauthorised occupant from such public premises [as defined in the Public Premises (Eviction of Unauthorised Occupants) Act, 1958] as are, in the opinion of the Central Government, required for the purposes connected with the defence of India and civil defence, the public safety or interest, the efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community.

(3) The rules made under sub-section (1) may further—

(i) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(ii) provide that any contravention of, or any attempt to contravene, or any abetment of, or any attempt to abet, the contravention of any of the provisions of the rules or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both;

(iii) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (ii) has been committed and for the adjudication of such forfeiture whether by a court or by any other authority;

(iv) confer powers and impose duties—

(a) upon the Central Government or officers and authorities of the Central Government as respects any matter, notwithstanding that the matter is one in respect of which the State Legislature has power to make laws; and

(b) upon any State Government or officers and authorities of any State Government as respects any matter, notwithstanding that the matter is one in respect of which the State Legislature has no power to make laws;

(v) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or any order made thereunder;

(vi) provide for preventing obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(vii) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules or any order made thereunder;

(viii) empower or direct any authority to take such action as may be specified in the rules or as may seem necessary to such authority for the purpose of ensuring the public safety or interest or the defence of India and civil defence;

(ix) provide for charging fees in respect of the grant or issue of a licence, permit, certificate or other document for the purposes of the rules.

Special powers to control civilian personnel employed in connection with the Armed Forces of the Union.

4. The Central Government may, by notification in the Official Gazette, direct by general or special order that any persons who not being members of the Armed Forces of the Union are attached to, or employed with, or following those Forces, shall be subject to naval, military or air force law, and thereupon such persons shall be subject to discipline and liable to punishment for offences under the Navy Act, 1957, the Army Act, 1950 and the Air Force Act, 1950, as the case may be, as if they were included in such class of persons subject to any of those Acts as may be specified in the notification or in the absence thereof, by an officer empowered by the Central Government in this behalf.

62 of 1957.  
46 of 1950.  
45 of 1950.

Enhanced penalties.

5. (1) If any person with intent to wage war against India or to assist any country committing external aggression against India, contravenes any provision of the rules made under section 3 or any order issued under any such rule, he shall be punishable with death or imprisonment for life, or imprisonment for a term which may extend to ten years and shall also be liable to fine.

(2) If any person,—

(a) contravenes any such provision of, or any such rule or order made under the Aircraft Act, 1934, as may be notified in this behalf by the Central Government, or

22 of 1934

(b) in any area notified in this behalf by a State Government, contravenes any such provision of, or any such rule made under, the Arms Act, 1959, the Indian Explosives Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the State Government,

54 of 1959.  
4 of 1884.  
6 of 1908.  
20 of 1952.

he shall, notwithstanding anything contained in any of the aforesaid Acts or rules made thereunder, be punishable with imprisonment for a term which may extend to five years, or, if his intention is to assist any country committing external aggression against India, or,

to wage war against India, with death, imprisonment for life or imprisonment for a term which may extend to ten years and shall in either case also be liable to fine.

(3) For the purposes of this section, any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

6. During the continuance in force of this Act,—

Temporary  
amendments  
to Acts.

19 of 1923.

(1) the Indian Official Secrets Act, 1923 shall have effect as if—

(a) in sub-section (1) of section 5 thereof, after the words "in his possession or control", the words "any information likely to assist the enemy as defined in the Defence of India Act, 1962, or" had been inserted; and after the words "in such a place," the words "or which relates to or is used in, a protected area as defined in the rules made under the Defence of India Act, 1962, or relates to anything in such area," had been inserted;

(b) for sub-section (4) of section 5 thereof, the following sub-section had been substituted, namely:—

"(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to five years, or if such offence is committed with intent to assist any country committing external aggression against India or to wage war against India, with death or imprisonment for life or imprisonment for a term which may extend to ten years and shall in either case also be liable to fine.";

(c) after clause (a) of section 12 thereof, the following clause had been inserted, namely:—

"(aa) an offence under section 5 shall be a cognizable and non-bailable offence;"

22 of 1934.

(2) the Aircraft Act, 1934 shall have effect as if—

(a) at the end of clause (r) of sub-section (2) of section 5, the following words had been inserted, namely:—

"including the taking of steps necessary to secure compliance with, or to prevent contravention of, the rules regulating such matters, or, where any such rule has been contravened, to rectify, or to enable proceedings to be taken in respect of, such contravention.";

(b) in clause (b) of sub-section (1) of section 8, for the words, brackets, letters and figures "clause (h) or clause (i) of sub-section (2) of section 5", the words, brackets, letters and figures "clause (d), (e), (h), (i), (k) or (l) of sub-section (2) of section 5, or the commission of an offence punishable under section 11," had been substituted;

(c) in section 11, after the words "in the air", the words "or in such a manner as to interfere with any of the Armed Forces of the Union or any ships or aircraft" had been inserted;

(d) in section 13, for the words, brackets, letters and figures "clause (i) of sub-section (2) of section 5" the words, brackets, letters and figures "clause (c), (d), (e), (h), (i), (j), or (k) of sub-section (2) of section 5 or punishable under section 11" had been substituted; and

(e) section 14 had been omitted;

(3) the Payment of Wages Act, 1936, shall have effect as if 4 of 1936. after clause (i) of sub-section (2) of section 7 thereof, the following clause had been inserted, namely:—

"(ii) deductions made with the written authorisation of—

(i) the employed person; or

(ii) the president or secretary of the registered trade union of which the employed person is a member on such conditions as may be prescribed,

for contribution to the National Defence Fund or to any Defence Savings Scheme approved by the State Government;"

(4) the Motor Vehicles Act, 1939 (in this clause referred to as the "said Act") shall have effect subject to the following provisions, namely:—

(a) the State Government may, by notification in the Official Gazette, authorise, subject to such conditions, if any, as it may think fit to impose, any person—

(i) also to perform such functions of the State Government under Chapter IV (in this clause referred to as the "said Chapter") of the said Act, other than the making of rules as may be specified in the notification; and

(ii) to perform to the exclusion of the State Transport Authority or Regional Transport Authority, as the case may be, such functions of the State Transport Authority or any Regional Transport Authority under the said Chapter as may be specified in the notification;

and the expression "proper authority" in this clause shall, in relation to the performance of any such function as aforesaid, be construed in accordance with the provisions of such notification, if any, relating to that function;

(b) notwithstanding anything to the contrary in section 58 or section 62 of the said Act, the proper authority may grant a permit or a temporary permit under the said Chapter to be effective for any specified period not exceeding five years;

(c) the State Government may, by general or special order, in writing, provide that the proper authority,—

(i) in deciding to grant or refuse to grant a permit under the said Chapter, shall not be bound to take into consideration representations made by any persons other than the applicant for the permit or to follow the procedure laid down in section 57 of the said Act, and may take into consideration an application for a stage carriage permit or a public carrier's permit which has not complied with the provisions of sub-section (2) of that section;

(ii) in fixing the maximum and minimum fares or freights for stage carriages and public carriers, shall not be bound to give the representatives of the interests affected an opportunity of being heard or to follow the procedure laid down in section 43 of the said Act, or where such action is taken for the purpose of preventing the charge of excess fares or freights, to have regard to any of the considerations set forth in clauses (a) to (d) of sub-section (1) of that section;

(d) without prejudice to the provisions of section 60 of the said Act, the proper authority may, if in its opinion the public interest so requires, cancel, or modify the conditions of, or suspend for such period as it thinks fit, any permit or counter-signature under the said Chapter which is valid in its jurisdiction;

(e) the State Government may, by general or special order in writing, exempt from all or any of the provisions of the said Chapter any transport vehicle used or required

for use in connection with any work or purpose declared by the State Government in the order to be a work or purpose connected with the defence of India, the conduct of military operations or civil defence;

(f) if the State Government by general or special order in writing so directs, the provisions of sub-section (2) of section 38 of the said Act shall have effect in relation to any controlled motor vehicles specified in the order as if the words "not being in any case more than two years or less than six months" had been omitted.

*Explanation.*—In this clause "controlled motor vehicle" means any motor vehicle declared by the Government to be a controlled motor vehicle by order made in this behalf.

### CHAPTER III CIVIL DEFENCE SERVICES

**Constitution  
of Civil  
Defence  
Service.**

7. (1) The State Government may constitute for any area within the State a body of persons to be called the Civil Defence Service and may appoint a person (hereinafter called the Director) to command such body.

(2) Subject to any orders which the Central Government may make in this behalf, any member of a Civil Defence Service of any State may at any time be required to discharge functions in relation to civil defence in any other State and shall while so discharging such functions be deemed to be a member of a Civil Defence Service of that other State and be vested with the powers, functions and privileges and be subject to the liabilities of a member of a Civil Defence Service of that other State.

**Appointment  
of members  
and officers.**

8. (1) Any authority authorised in this behalf by the State Government may appoint as members of a Civil Defence Service so many persons who are fit and willing to serve as such as it is authorised by the State Government to appoint, and the Director may appoint any such member to any office or command in the Service.

(2) Every person so appointed to be a member of a Civil Defence Service shall be given a certificate of membership in such form as may be prescribed.

**Dismissal of  
members  
of Civil  
Defence  
Service.**

9. The Director or any other authority authorised in this behalf by the State Government may, by order in writing, dismiss summarily from a Civil Defence Service any member thereof if, in the opinion of the Director or such other authority, he fails to discharge satisfactorily, or is guilty of misconduct in the discharge of, his duties as such member, or his continued presence in the Service is otherwise undesirable.

10. (1) The members of a Civil Defence Service shall perform such functions in relation to the carrying out of measures for civil defence as may be assigned to them by rules made under this Act or by any other law for the time being in force.

Functions  
of mem-  
bers of  
Civil  
Defence  
Services.

(2) The Director or any person authorised in this behalf by the Director or by the State Government may by order at any time call out a member of a Civil Defence Service for training or to discharge any such functions as aforesaid.

11. If any member of a Civil Defence Service on being called out by an order under sub-section (2) of section 10 neglects or refuses without sufficient excuse to obey such order or to discharge his functions as a member of the Civil Defence Service or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent court, be punishable with fine which may extend to five hundred rupees.

Penalty.

12. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

Power to  
make  
rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may—

(a) prescribe the duties of members of Civil Defence Services and regulate the manner in which they may be called out for service;

(b) regulate the organisation, appointment, conditions of service, discipline, accoutrement, and clothing of members of any or all of the Civil Defence Services;

(c) prescribe the form of certificates of membership of any or all of the Civil Defence Services;

(d) provide that a contravention of, or an attempt to contravene, and any abetment of or attempt to abet the contravention of, any of the provisions of the rules or of any order issued under any such provision shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both;

(e) provide for the arrest and trial of persons contravening, or reasonably suspected of contravening, any of the provisions of the rules or of any order issued under any such provision;

(f) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (d) has been committed;

(g) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or of any order issued thereunder;

(h) provide for preventing the obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or of any order issued thereunder;

(i) prohibit attempts to screen from punishment any person contravening any of the rules.

## CHAPTER IV

### SPECIAL TRIBUNALS

Constitution  
of Special  
Tribunals.

13. (1) The State Government may, for the whole or any part of the State, constitute one or more Special Tribunals which or each of which shall consist of three members appointed by that Government.

(2) No person shall be appointed as a member of a Special Tribunal unless he—

(a) is qualified under clause (2) of article 217 of the Constitution for appointment as a Judge of a High Court; or

(b) has exercised the powers under the Code of Criminal Procedure, 1898 (hereinafter in this Chapter referred to as the Code) of any one or more of the following, namely:—

5 of 1898

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate,

(ii) District Magistrate, Additional District Magistrate.

Jurisdiction  
of Special  
Tribunals.

14. During the period during which the Proclamation of Emergency is in operation, the State Government may, by general or special order, direct that a Special Tribunal shall try any offence—

(a) under any rule made under section 3, or

(b) punishable with death, imprisonment for life or imprisonment for a term which may extend to seven years,

triable by any court having jurisdiction within the local limits of the jurisdiction of the Special Tribunal and may in any such order direct the transfer to the Special Tribunal of any particular case from any

other Special Tribunal or any other criminal court not being a High Court.

15. (1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.

Procedure  
of Special  
Tribunals.

(2) Save in cases of trials of offences punishable with death or imprisonment for life, it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing, but the Special Tribunal shall cause a memorandum of the substance of what each witness deposes, to be taken down, and such memorandum shall be signed by a member of the Special Tribunal and shall form part of the record.

(3) A Special Tribunal shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interests of justice.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and to re-hear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) After an accused person has once appeared before it, a Special Tribunal may try him in his absence if, in its opinion, his absence has been brought about by the accused himself for the purpose of impeding the course of justice, or if the behaviour of the accused in court has been such as, in the opinion of the Special Tribunal, to impede the course of justice.

(6) In the event of any difference of opinion among the members of a Special Tribunal, the opinion of the majority shall prevail.

(7) The State Government may, by notification in the Official Gazette, make rules providing for—

(i) the times and places at which Special Tribunals may sit; and

(ii) the procedure to be adopted in the event of any member of a Special Tribunal being prevented from attending throughout the trial of any accused person.

(8) A Special Tribunal shall, in all matters in respect to which no procedure has been prescribed by this Act or by rules made thereunder, follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

16. In addition, and without prejudice, to any powers which a Special Tribunal may possess by virtue of any law for the time being in force to order the exclusion of the public from any proceedings, if at any stage in the course of a trial of any person before a Special

Exclusion of  
public from  
proceedings  
of Special  
Tribunals.

Tribunal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the trial would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Special Tribunal may make an order to that effect, but the passing of the sentence shall in any case take place in public.

Power of  
Special  
Tribunals.

17. A Special Tribunal shall have all the powers conferred by the Code on a Court of Session exercising original jurisdiction.

Sentences  
of Special  
Tribunals.

18. (1) A Special Tribunal may pass any sentence authorised by law.

(2) A person sentenced by a Special Tribunal—

(a) to death or imprisonment for life, or

(b) to imprisonment for a term extending to ten years under section 5 of this act or under sub-section (4) of section 5 of the Indian Official Secrets Act, 1923, as amended by section 6 of this Act, 19 of 1923.

shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid and notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall be no appeal from any order or sentence of a Special Tribunal, and no court shall have authority to revise such order or sentence, or to transfer any case from a Special Tribunal, or to make any order under section 491 of the Code, or have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

(3) The powers conferred upon the appropriate Government by Chapter XXIX of the Code shall apply in respect of a person sentenced by a Special Tribunal.

## CHAPTER V

### EMPLOYMENT OF TECHNICAL PERSONNEL IN THE NATIONAL SERVICE

Definitions.

19. In this Chapter, unless the context otherwise requires,—

(a) “employment in the national service” means employment in a notified establishment in pursuance of an order passed under section 23;

(b) “employer” means any person who employs technical personnel to do any work in an establishment and includes any

person entrusted with the supervision and control of technical personnel in such an establishment;

(c) "establishment" means—

(i) any office, or

(ii) any place where any industry, trade, business or occupation is carried on; and includes any technical institution or training centre established, selected or approved by the Central Government;

(d) "National Service Tribunal" means a Tribunal constituted under section 21;

(e) "notified establishment" means any Government establishment and any establishment declared by notification under sub-section (1) of section 22 to be engaged in work of national importance;

(f) "notified occupation" means any occupation which the Central Government may, by rules made under this Chapter, specify as a notified occupation for the purposes of this Chapter;

(g) "technical personnel" means all persons who possess knowledge of or skill in one or more of the notified occupations, whether or not they are employed in any establishment, and includes such persons or class of persons undergoing training in any of those occupations in any establishment as may be declared by the Central Government by notification in the Official Gazette to be technical personnel for the purposes of this Chapter.

20. All technical personnel, being citizens of India and not being members of the Armed Forces of the Union or members of any Reserve of any such Force who are liable, under the terms of their service in such Reserve, to be called up for service at any time and not only on partial or general mobilisation, shall be liable under this Chapter to undertake employment in the national service.

Liability for employment in national service.

21. (1) The Central Government shall constitute, for such areas and in such places as it thinks fit, National Service Tribunals to exercise the functions assigned to such tribunals by or under this Chapter.

National Service Tribunals.

(2) The composition, powers and procedure of National Service Tribunals shall be such as may be prescribed.

22. (1) The Central Government may, by notification in the Official Gazette, declare any establishment, which is engaged in work which, in the opinion of the Central Government, is likely to assist

Notified establishments.

the defence of India and civil defence, the efficient conduct of military operations, or the maintenance or increase of supplies and services essential to the life of the community, to be an establishment engaged in work of national importance and thereupon such establishment shall be a notified establishment and while making such declaration, the Central Government may require that establishment to make such provisions as may be specified in the notification in regard to the terms of service and conditions of work of its employees.

(2) Every notified establishment shall be eligible to apply to a National Service Tribunal or to the Central Government for technical personnel and having so applied, shall take into its employment such technical personnel within such period and on such terms and conditions as may be prescribed.

Employment  
of technical  
personnel in  
the national  
service.

23. (1) Subject to any rules made in this behalf under this Chapter, the Central Government may require a National Service Tribunal to report what technical personnel, whether employed in an establishment or not, is available within its jurisdiction for employment in the national service and may by order in writing,—

(a) require the employer in any establishment by which such technical personnel is employed to release such personnel as may be specified in the order, for employment in the national service;

(b) direct any technical personnel to undertake such employment in the national service as may be specified in the order;

(c) direct that any technical personnel engaged in any establishment under conditions not amounting to employment in the national service shall, for the purposes of sub-section (8), be deemed to have been taken into employment in the national service; and

(d) require any notified establishment, notwithstanding that it has not made any application under section 22, to take into its employment such technical personnel within such period as may be specified in the order.

(2) Notwithstanding anything in sub-section (1), a National Service Tribunal may—

(a) exercise the powers conferred on the Central Government by clauses (a) and (b) of sub-section (1);

(b) require by order any employer to give training in his establishment to persons for qualifying them as technical personnel;

(c) direct by order technical personnel to present themselves at such place and time as may be specified in the order for interview or inquiry, and if so required, for submission to a test of their technical skill.

(3) Any order made by the Central Government under sub-section (1) and by a National Service Tribunal under sub-section (2) shall be complied with within such period or on such date as may be specified in this behalf in the order.

(4) The Central Government or, as the case may be, a National Service Tribunal, may, by order in writing, transfer technical personnel from one form or place of employment in the national service to another; and the employer and the personnel concerned shall comply with such order.

(5) No person included in the definition of technical personnel, who has been directed to undertake employment in the national service or transferred from one form or place of employment to another under the foregoing provisions, shall be discharged from or leave his employment in such service unless the employer or person concerned has previously obtained the permission of the Central Government or, as the case may be, of the National Service Tribunal.

(6) Any person included in the definition of technical personnel who is required to undertake employment in the national service or transferred from one form or place of employment to another under the foregoing provisions of this section, may be required by the Central Government, or, as the case may be, the National Service Tribunal concerned, to submit himself to be examined by such medical authority as may be prescribed.

(7) An appeal shall lie to the Central Government against any order passed by a National Service Tribunal under this section and the decision of the Central Government shall be final.

(8) The terms of service of technical personnel taken into employment in the national service shall be such as may be prescribed:

Provided that any rights which such technical personnel may have under the provident or superannuation fund or other scheme relating to gratuity, bonus or other benefit for the advantage of employees maintained by the establishment from which they are released shall be preserved.

24. (1) Every person who was employed in his former employment otherwise than in a probationary or temporary capacity and whose employment in the national service has not been terminated Reinstatement.

by dismissal for serious misconduct shall, on his release from such employment in the national service, be entitled to be reinstated in his former employment, in accordance with such conditions as may be prescribed:

Provided that in determining such conditions regard shall be had to the additional skill and experience acquired by him in the course of his employment in the national service.

**(2) The Central Government may by rules made in this behalf provide for the appointment of Technical Personnel (Reinstatement) Tribunals to deal with such matters in relation to reinstatement of persons released from employment in the national service as may be prescribed.**

Relinquish-  
ment of  
employment  
by dismissal  
of, and  
engagement  
by establish-  
ment of,  
technical  
personnel.

**25. (1)** Subject to any rules made in this behalf, a National Service Tribunal may require any establishment (including a notified establishment) to post before a specified date and to keep posted, on its premises notices intimating that—

(a) no person included within the definition of technical personnel who is employed in the establishment shall at any time after the posting of the notice, leave his employment without the previous permission in writing of the National Service Tribunal;

(b) if the National Service Tribunal refuses such permission, that tribunal may lay down, subject to the prescribed conditions, the terms of service on which the employer shall continue to retain him in employment;

(c) if any such person leaves his employment without the previous permission in writing of the Tribunal as aforesaid he may be directed by the Tribunal to return to his employment.

**(2)** After notices referred to in sub-section (1) have been posted on the premises of any establishment (including a notified establishment), no employer in the establishment shall engage, discharge or dismiss any person included in the definition of technical personnel except in accordance with rules made in this behalf.

Penalties  
and pro-  
cedure.

**26. (1)** Whoever contravenes any order of the Central Government or of a National Service Tribunal made under section 23 or wilfully fails to comply with any summons, requirement, direction or order issued or made by the Central Government or by a National Service Tribunal under any other provision of this Chapter shall be punishable with imprisonment for a term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.

(2) No court shall take cognizance of any offence punishable under sub-section (1) except with the previous sanction in writing,—

(a) in the case of contravention of any order or any wilful failure to comply with any summons, requirement or direction of the Central Government, of the Central Government;

(b) in the case of contravention of any order or any wilful failure to comply with any summons, requirement or direction of a National Service Tribunal, of the National Service Tribunal.

5 of 1898. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under sub-section (1) shall be cognizable.

(4) No court inferior to a Presidency Magistrate or a Magistrate of the First Class shall try any offence punishable under sub-section (1).

27. Any summons, notice, requirement, direction or order issued, made or given to any person under this Chapter may be served by being sent by post addressed to that person at his last known residence. Service of summons, notices, orders, etc

28. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter. Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the occupations which shall be notified occupations for the purposes of this Chapter;

(b) the composition, powers and procedure of National Service Tribunals;

(c) the technical personnel, which may be taken into the employment of any notified establishment under sub-section (2) of section 22 and the period within which and the terms and conditions on which such personnel shall be so taken;

(d) the medical authority before whom any person may be required to submit himself for examination under sub-section (6) of section 23;

(e) the terms of service of technical personnel taken into employment in the national service;

(f) the conditions in accordance with which persons released from employment in the national service may be reinstated in their former employment;

(g) the appointment of Technical Personnel (Reinstatement) Tribunals and the matters in relation to reinstatement which such Tribunals may be required to deal with;

(h) the provisions relating to engagement, discharge or dismissal of persons by any employer in any establishment on the premises of which notices have been posted under sub-section (1) of section 25;

(i) any other matter which may be prescribed or which is to be provided for by rules.

(3) Any rule made under this Chapter may provide that a contravention of the rule shall be punishable with imprisonment for a term not exceeding six months, or with fine not exceeding one thousand rupees, or with both.

## CHAPTER VI

### REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY

Requisitioning of immovable property.

29. (1) Notwithstanding anything contained in any other law for the time being in force, if in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India, civil defence, public safety, maintenance of public order or efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any immovable property and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof which is exclusively used by the public for religious worship shall be requisitioned.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central Government or the State Government, as the case may be, to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

Payment of compensation.

30. Whenever in pursuance of section 29 the Central Government or the State Government, as the case may be, requisitions any immovable property, there shall be paid to the persons interested

compensation the amount of which shall be determined by taking into consideration the following, namely:—

(i) the rent payable in respect of the property or if no rent is payable, the rent payable in respect of similar property in the locality;

(ii) if in consequence of the requisition of the property the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine;

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

*Explanation.*—In this section, the expression “person interested” means the person who was in actual possession of the property requisitioned under section 29 immediately before the requisition, or where no person was in such actual possession, the owner of such property.

31. The Central Government or the State Government, as the case may be, may, with a view to requisitioning any property under section 29 or determining the compensation payable under section 30, by order—

Power to obtain information and give direction.

(a) require any person to furnish to the authority mentioned therein such information in his possession relating to any property as may be specified;

(b) direct that the owner, occupier or the person in possession of the property shall not, without the permission of Government, dispose of it or where it is a building, structurally alter it till the expiry of such period as may be specified in the order.

Power of entry into, and inspection of, property, etc.

32. Any person authorised in this behalf by the Central Government or the State Government, as the case may be, may enter into any immovable property and inspect such property for the purpose of determining whether, and if so in what manner, an order under section 29 should be made in relation to such property or with a view to securing compliance with any order made under that section.

Eviction from requisitioned property.

33. (1) Any person remaining in possession of any requisitioned property in contravention of any order made under section 29 may be summarily evicted from the property by any officer empowered in this behalf by the Central Government or the State Government, as the case may be.

(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

Penalty for contravention of any order regarding requisitioning.

34. If any person contravenes any order made under section 29 or section 31, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Release from requisition.

35. (1) Where any property requisitioned under section 29 is to be released from such requisition, the Government by which or under whose authority the property was requisitioned or any person generally or specially authorised by it in this behalf may, after such inquiry, if any, as it or he may in any case, consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given.

(2) The delivery of possession of the property to the person specified in the order under sub-section (1) shall be a full discharge of the Government from all liabilities in respect of the property, but shall not prejudice by any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is delivered.

Acquisition of requisitioned property.

36. (1) Any immovable property which has been requisitioned under section 29 may, in the manner hereinafter provided, be acquired in the circumstances and by the Government specified below, namely:—

(a) where any works have, during the period of requisition, been constructed on, in or over the property wholly or partly at the expense of any Government, the property may be acquired

by that Government if it decides that the value of or the right to use, such works shall, by means of the acquisition of the property, be preserved or secured for the purposes of any Government, or

(b) where the cost to any Government of restoring the property to its condition at the time of its requisition as aforesaid would, in the determination of that Government, be excessive having regard to the value of the property at that time, the property may be acquired by that Government.

(2) When any Government as aforesaid decides to acquire any immovable property, it shall serve on the owner thereof or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Official Gazette, a notice stating that the Government has decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Official Gazette under sub-section (2), then, at the beginning of the day on which the notice is so served or published, the property shall vest in the Government free from any mortgage, pledge, lien or other similar encumbrances and the period of requisition thereof shall come to an end.

(4) Any decision or determination of a Government under sub-section (1) shall be final, and shall not be called in question in any court.

(5) For the purposes of this section, "works" includes every description of buildings, structures and improvements of the property.

**37. (1) The compensation payable for the acquisition of any property under section 36 shall be—**

Compensation or acquisition of requisitioned property.

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of the requisition,

**whichever is less.**

(2) Where the owner of any property acquired under section 36 is aggrieved by the amount of compensation determined in accordance with sub-section (1), he may make an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator appointed in this behalf by the Central Government or the State

Government, and the amount of compensation to be paid shall be such as may be determined by the arbitrator in accordance with sub-section (1).

(3) Where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and his decision thereon shall be final.

Power to  
make rules

38. (1) The Central Government or the State Government, as the case may be, may by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may prescribe—

(a) the procedure to be followed in arbitration proceedings under this Chapter;

(b) the period within which the owner of any property or any other person interested in the amount of compensation may apply to the Government concerned for referring the matter to an arbitrator;

(c) the principles to be followed in apportioning the costs of proceedings before the arbitrator;

(d) the method of payment of compensation;

(e) the manner of service of notices and orders;

(f) any other matter which has to be, or may be, prescribed.

Certain  
properties  
requisi-  
tioned under  
previous  
law to be  
deemed to  
be requis-  
itioned  
under this  
Chapter.

39. Any property referred to in sub-section (2) of section 24 of the Requisitioning and Acquisition of Immovable Property Act, 1952, which continued, immediately before the commencement of that Act, to be subject to requisition under the Requisitioned Land (Continuance of Powers) Act, 1947, and has not, immediately before the commencement of this Act, been released from requisitioning shall, notwithstanding anything contained in any other law for the time being in force or in any judgment, decree or order of any court, be deemed to be the property requisitioned under sub-section (1) of section 29 if such property is, in the opinion of the Central Government, now required for any of the purposes specified in that sub-section: 30 of 1952. 17 of 1947.

Provided that—

(a) all agreements or awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Act and in force immediately before such commencement, shall continue to be in force

and shall apply to the payment of compensation in respect of that property for any period after such commencement;

30 of 1952.

17 of 1947.

(b) anything done or any action taken (including any orders, notifications or rules made or issued) under the Requisitioning and Acquisition of Immovable Property Act, 1952, or under the Requisitioned Land (Continuance of Powers) Act, 1947, and continued under the first-mentioned Act, shall, in so far as it is not inconsistent with the provisions of this Chapter or any rules or orders made thereunder, be deemed to have been done or taken under this Chapter.

## CHAPTER VII

### SUPPLEMENTAL

40. (1) The Central Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(a) by any officer or authority subordinate to the Central Government, or

(b) whether or not the power or duty relates to a matter with respect to which a State Legislature has power to make laws, by any State Government or by any officer or authority subordinate to such Government, or

(c) by any other authority.

(2) The State Government may, by order, direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which, being by this Act or any such rule conferred or imposed on the Central Government, has been directed under sub-section (1) to be exercised or discharged by the State Government, shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority not being (except in the case of a Union territory) an officer or authority subordinate to the Central Government.

41. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in

Rules to be laid before Houses of Parliament.

one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Jurisdiction of ordinary courts.

42. (1) Except as may be provided in this Act or in any rule made thereunder or in any order made under any such rule by the Central Government or the State Government or by an officer not below the rank of Collector empowered under sub-section (1) or sub-section (2) of section 40 to make such order, the ordinary criminal and civil courts shall continue to exercise jurisdiction.

(2) For the removal of doubts, it is hereby declared that any provision in any such rule or order as aforesaid to the effect that the decision of any authority not being a court shall be final or conclusive shall be a sufficient excepting provision within the meaning of sub-section (1).

Effect of Act and rules, etc., inconsistent with other enactments.

43. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Ordinary avocations of life to be interfered with as little as possible.

44. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of India and civil defence.

Savings as to orders.

45. (1) No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

I of 1872.

Chapter III not to apply to measures taken for the protection of Armed Forces.

46. Unless otherwise expressly provided in any rules or orders made under Chapter III, nothing contained in that Chapter or any such rules or orders shall apply to the Armed Forces of the Union or to any measures taken by any of the authorities in control of the Armed Forces for the purpose of securing the defence or safety of such forces or for the protection of any naval, military or air force installations.

47. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any orders issued under any such rule. Protection of action taken under the Act.

(2) Save as otherwise expressly provided under this Act, no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rule made thereunder or any order issued under any such rule.

4 of 1962. 48. (1) The Defence of India Ordinance, 1962, and the Defence of India (Amendment) Ordinance, 1962, are hereby repealed. Repeal and saving.  
6 of 1962.

4 of 1962. (2) Notwithstanding such repeal, any rules made, anything done or any action taken under the Defence of India Ordinance, 1962, as amended by the Defence of India (Amendment) Ordinance, 1962  
6 of 1962. shall be deemed to have been made, done or taken under this Act as if this Act had commenced on the 26th October, 1962.

## STATEMENT OF OBJECTS AND REASONS

The Bill seeks to replace with a few changes the Defence of India Ordinance, 1962 [as amended by the Defence of India (Amendment) Ordinance, 1962] promulgated by the President on the issue of the Proclamation of Emergency on the 26th October, 1962. The principal changes introduced in the Bill relate to employment of technical personnel in the national service and a few additional matters in sub-clause (2) of clause 3.

LAL BAHADUR.

NEW DELHI;

*The 11th November, 1962.*

## FINANCIAL MEMORANDUM

Items (1), (8), (10), (11), (20), (26), (27), (28), (30), (35), (46), (48), (49), (50), (51), (52), and (54), of sub-clause (2) of clause 3, and also clauses 7(1), 8(1), 13(1), 21, 24(2), 30, 37(1), and sub-clause (a) of the proviso to clause 39 are likely to involve expenditure. Measures indicated in other items of sub-clause (2) of clause 3 being mostly of a preventive or regulatory nature may not involve extra expenditure unless it becomes necessary to enforce them on a wide scale. The quantum of expenditure involved will largely depend on the nature and size of measures that may have to be taken, from time to time, to meet the emergency. It is, therefore, not possible to assess the magnitude of the expenditure with any degree of accuracy, nor is it possible to indicate how much of this would be met from the Consolidated Fund of India.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 12, 28 and 38 of the Bill confer rule-making powers on the Central Government. Clause 38 confers such powers also on the State Governments. The delegation of powers under clause 38 is for regulating procedural matters and is normal in character. The other provisions, particularly clause 3, confer somewhat wide rule-making powers on the Central Government. To deal with the present emergency, the Central Government should have sufficient powers to take such action as may be necessary or expedient and clothe itself with adequate legal authority to take such measures. The delegation of powers under clauses 3, 12 and 28 is thus normal in character during a period of emergency.

## \*BILL No. 98 OF 1962

*A Bill to provide for the readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State, the division of each State into territorial constituencies for elections to the House of the People and Legislative Assemblies of the States and for matters connected therewith.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Delimitation Commission Act, 1962. **Short title.**

2. In this Act, unless the context otherwise requires,—

**Definitions.**

5 (a) "article" means an article of the Constitution;

(b) "associate member" means a member nominated under section 5;

(c) "Commission" means the Delimitation Commission constituted under section 3;

10 (d) "latest census figures" mean the census figures as ascertained at the census held in 1961;

(e) "member" means a member of the Commission and includes the Chairman;

15 (f) "State" does not include the State of Jammu and Kashmir and the State of Nagaland.

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\*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

Constitution  
of Delimitation  
Commission.

3. (1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:—

(a) two members, each of whom shall be a person who is 5  
or has been a Judge of the Supreme Court or of a High Court,  
to be appointed by the Central Government, and

(b) the Chief Election Commissioner, *ex officio*.

(2) The Central Government shall nominate one of the members appointed under clause (a) of sub-section (1) to be the Chairman of 10  
the Commission.

Duties  
of the Com-  
mission.

4. It shall be the duty of the Commission to readjust on the basis of the latest census figures the allocation of seats in the House of the People to the several States, the total number of seats in the Legislative Assembly of each State and the division of each State 15  
into territorial constituencies for the purpose of elections to the House of the People and to the State Legislative Assembly.

Associate  
members.

5. (1) The Commission shall associate with itself for the purpose of assisting it in its duties in respect of each State, seven persons three of whom shall be members of the House of the People repre- 20  
senting that State and four shall be members of the Legislative Assembly of that State.

(2) The persons to be so associated from each State shall be nominated, in the case of members of the House of the People, by the Speaker of that House, and in the case of members of a Legis- 25  
lative Assembly, by the Speaker of that Assembly, having due regard to the composition of the House or, as the case may be, of the Assembly.

(3) The first nominations to be made under sub-section (2)—

(a) shall be made by the Speakers of the several Legis- 30  
lative Assemblies within one month, and by the Speaker of the House of the People within two months, of the commencement of this Act, and

(b) shall be communicated to the Chief Election Commis-  
sioner, and where the nominations are made by the Speaker of 35  
a Legislative Assembly, also to the Speaker of the House of the People.

(4) None of the associate members shall have a right to vote or to sign any decision of the Commission.

6. If owing to death or resignation the office of the Chairman or of a member or of an associate member falls vacant, it shall be filled as soon as may be practicable by the Central Government or the Speaker concerned under and in accordance with the provisions of section 3 or, as the case may be, of section 5. Casual vacancies.

7. (1) The Commission shall determine its procedure and shall in the performance of its functions have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— Procedure and powers of the Commission.

- 5 of 1908.
- 10 (a) summoning and enforcing the attendance of witnesses;
  - (b) requiring the production of any document; and
  - (c) requisitioning any public record from any court or office.

(2) The Commission shall have power to require any person to furnish any information on such points or matters as in the opinion of the Commission may be useful for, or relevant to, any matter under the consideration of the Commission.

(3) The Commission may authorise any of its members to exercise any of the powers conferred on it by clauses (a) to (c) of sub-section (1) and sub-section (2), and any order made or act done in exercise of any of those powers by the member authorised by the Commission in that behalf shall be deemed to be the order or act, as the case may be, of the Commission.

(4) If there is a difference of opinion among the members, the opinion of the majority shall prevail, and acts and orders of the Commission shall be expressed in terms of the views of the majority.

(5) The Commission as well as any group of associate members shall have power to act notwithstanding the temporary absence of a member or associate member or the existence of a vacancy in the Commission or in that or any other group of associate members; and no act or proceeding of the Commission or of any group of associate members shall be invalid or called in question on the ground merely of such temporary absence or of the existence of such vacancy.

(6) The Commission shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure 1898.

5 of 1898.

*Explanation.*—For the purposes of enforcing the attendance of witnesses the local limits of the jurisdiction of the Commission shall be the limits of the territory of India.

Res: Just-  
mens of  
number of  
seats

8. The Commission shall, on the basis of the latest census figures and having regard to the provisions of articles 81, 170, 330 and 332, by order determine—

(a) the number of seats in the House of the People to be allocated to each State and number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State; and

(b) the total number of seats to be assigned to the Legislative Assembly of each State and the number of seats, if any, to be reserved for the Scheduled Castes and for the Scheduled Tribes of the State:

Provided that the total number of seats assigned to the Legislative Assembly of any State under clause (b) shall be an integral multiple of the number of seats in the House of the People allocated to that State under clause (a).

15

Delimitation  
of consti-  
tuencies.

9. (1) The Commission shall, in the manner herein provided, then distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State to single-member territorial constituencies and delimit them on the basis of the latest census figures, having regard to the provisions of the Constitution and to the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

25

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

30

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

35

(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of an

associate member who desires publication thereof, in the Gazette of India and Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

5 (b) specify a date on or after which the proposals will be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places as it thinks fit; and

10 (d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies, and

(ii) the delimitation of assembly constituencies of each State.

15 10. (1) The Commission shall cause each of its orders made under section 8 or section 9 to be published in the Gazette of India and in the Official Gazettes of the States concerned.

Publication  
of orders  
and their  
date of  
operation.

(2) Upon publication in the Gazette of India, every such order shall have the full force of law and shall not be called in question in any court.

20 (3) As soon as may be after such publication, every such order shall be laid before the House of the People and the Legislative Assemblies of the States concerned.

(4) Subject to the provisions of sub-section (5), the readjustment of representation of the several territorial constituencies in the  
25 House of the People or in the Legislative Assembly of a State and the delimitation of those constituencies provided for in any such order shall apply in relation to every election to the House or to the Assembly, as the case may be, held after the publication in the Gazette of India of that order and shall so apply in supersession of  
30 the provisions relating to such representation and delimitation contained in the Representation of the People Act, 1950, and the Delimitation of Parliamentary and Assembly Constituencies Order, 1961.

43 of 1950.

(5) Nothing in this section shall affect the representation in the House of the People or in the Legislative Assembly of a State until  
35 the dissolution of the House or of the Assembly, as the case may be, existing on the date of publication in the Gazette of India of the final order of the Commission relating to the delimitation of parliamentary constituencies or, as the case may be, of the assembly constituencies of that State.

Power to  
maintain  
delimitation  
orders  
up-to-date.

11. The Election Commission may, from time to time, by notification in the Gazette of India and in the Official Gazette of the State concerned,—

(a) correct any printing mistake in any of the orders made by the Delimitation Commission under section 9 or any error arising therein from an inadvertent slip or omission; and 5

(b) where the boundaries or name of any district or any territorial division mentioned in any of the said orders are or is altered, make such amendments as appear to it to be necessary or expedient for bringing the orders up-to-date. 10

## STATEMENT OF OBJECTS AND REASONS

Articles 82 and 170(3) of the Constitution provide that upon the completion of each census—

(a) the allocation of seats in the House of the People to the States,

(b) the total number of seats in the Legislative Assembly of each State,

(c) the division of each State into territorial constituencies for electing members to the House of the People and the Legislative Assembly,

shall be readjusted by such authority and in such manner as Parliament may by law determine.

2. The present delimitation of parliamentary and assembly constituencies is based on the population figures of the 1951-census. As the 1961-census has been completed, a readjustment of the several matters specified above is, therefore, necessary. The object of the Bill is to set up a Delimitation Commission for the purpose of effecting such readjustment on the basis of the population as ascertained at the census of 1961. The Bill also seeks to lay down certain instructions as to the manner in which such readjustment will be made for the guidance of the Delimitation Commission. These instructions are generally based on the provisions of articles 81 and 170 of the Constitution and the procedure followed in delimitation of parliamentary and assembly constituencies under the Delimitation Commission Act of 1952. It has also been provided in the Bill that the readjustment which will be made by the Delimitation Commission will apply to every general election to the House of the People or to a State Legislative Assembly held after the final orders of the Commission have been published and to every bye-election arising from such general election.

NEW DELHI:

A. K. SEN.

*The 6th November, 1962.*

## FINANCIAL MEMORANDUM

The Delimitation Commission Bill contemplates the setting up of a Delimitation Commission for the purpose of effecting readjustment of the allocation of seats in the House of the People to the States, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies for electing members to the House of the People and the Legislative Assembly on the basis of the population ascertained at the census held in 1961 as required by articles 82 and 170(3) of the Constitution.

2. The Commission is to consist of three members of whom two shall be appointed from among persons who are or have been Judges of the Supreme Court or of a High Court and the Chief Election Commissioner shall be an *ex officio* member of the Commission. The Commission shall also associate with itself for the purpose of assisting it in its duties in respect of each State seven persons, three of whom shall be members of the House of the People representing that State nominated by the Speaker of that House and four shall be members of the Legislative Assembly of that State nominated by the Speaker of that Assembly. The Commission will also have a small office staff. As far as can be anticipated, the cost involved will be about Rs. 1,50,000 (non-recurring) for a period of about six months. The estimate is necessarily a rough one.

## \*BILL No. 107 OF 1962

*A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the service of the financial year 1962-63 for the purposes of Railways.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Appropriation (Railways) No. 5 Short title. Act, 1962.
- 5 2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of four crores, eighty-one lakhs and ninety-two thousand rupees towards defraying the several charges which will come in course of payment during the financial year 1962-63, in respect of the services relating to railways specified in column 2 of the Schedule. Issue of Rs.  
4,81,92,000  
out of the  
Consolidated  
Fund of  
India for  
the Financial  
year 1962-63.
- 10 3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year. Appropriation.

\*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, and with clause (2) of article 115 thereof, recommended to Lok Sabha the introduction and consideration of the Bill.

## THE SCHEDULE

(See sections 2 and 3)

1	2	3		
No. of Vote	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consoli- dated Fund	Total 5
		Rs.	Rs.	Rs.
7	Ordinary Working Expenses— Operation (Fuel) . . .	2,55,08,000	.. .	2,55,08,000 10
9	Ordinary Working Expenses— Miscellaneous Expenses . .	2,10,41,000	13,68,000	2,24,09,000
15	Construction of New Lines .	50,000	..	50,000
16	Open Line Works—Additions .	2,25,000	..	2,25,000
	TOTAL	4,68,24,000	13,68,000	4,81,92,000 15

## STATEMENT OF OBJECTS AND REASONS

The Bill is introduced in pursuance of article 114(1) of the Constitution of India read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the supplementary expenditure charged on the Consolidated Fund of India and the grants made by the Lok Sabha for expenditure of the Central Government on Railways for the financial year 1962-63.

SWARAN SINGH.

## BILL No. 95 OF 1962

*A Bill further to amend the Central Silk Board Act, 1948.*

Be it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

**Short title.** 1. This Act may be called the Central Silk Board (Amendment) Act, 1962.

**Amendment of section 4.** 2. In sub-section (3) of section 4 of the Central Silk Board Act, 1948 (hereinafter referred to as the principal Act),— 5

(i) for clauses (b), (c) and (d), the following clauses shall be substituted, namely:—

“(b) not more than two officials to be nominated by the Central Government; 10

“(c) four persons to be elected by Parliament, three from the House of the People by the members of the House of the People and one from the Council of States by the members of the Council of States;

“(d) four persons to be nominated by the Government of Mysore, one of whom shall represent the flature raw silk industry and two shall represent the rest of the sericulture industry;” 15

(ii) for clauses (f), (g) and (h), the following clauses shall be substituted, namely:— 20

“(f) one person to be nominated by the Government of West Bengal;

(g) one person to be nominated by each of the Governments of Assam, Bihar, Madhya Pradesh, Andhra Pradesh and Uttar Pradesh;

5 (h) two persons to be nominated by the Government of Jammu and Kashmir;"; and

(iii) for clause (j), the following clause shall be substituted, namely:—

10 " (j) six persons to be nominated by the Central Government of whom one shall represent the spun silk industry, one the silk throwing and twisting industry, one the silk weaving industry, one labour; and one of them shall be an expert in sericulture."

3. For sub-section (1) of section 6 of the principal Act, the following sub-section shall be substituted, namely:— Amendment  
of section 6.

15 " (1) The Board shall elect a Vice-Chairman who shall exercise such of the powers and perform such of the duties of the Chairman as may be prescribed or as may be delegated to him by the Board or the Chairman."

## STATEMENT OF OBJECTS AND REASONS

The Central Silk Board Act was enacted in 1948. Since then there has been considerable development in the silk industry of the country which warrants certain changes in the constitution of the Central Silk Board.

Hence the Bill.

NEW DELHI;  
*The 18th August, 1962.*

SHAM LAL SARAF.

BILL No. 96 of 1962

*A Bill to provide for the fixation of ceiling on the length of cinematograph films produced in the country.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Length of Cinematograph Films (Ceiling) Bill, 1962. Short title  
extent and  
commence-  
ment.
- 5 (2) It extends to the whole of India.
- (3) It shall come into force at once.
2. (1) No producer in India shall produce a cinematograph film Ceiling on  
length of  
films.  
having more than 10,000 feet as its length.
- (2) A producer, who intends to produce a film of a length of more  
10 than 10,000 feet, shall, without prejudice to sub-section (1), seek permission of the Central Government to do so.
- (3) The permission for which a formal request has been made under sub-section (2) shall be granted only if there are adequate grounds for doing so and such grounds shall be recorded in writing.
- 15 (4) The decision of the Central Government in case of a refusal of the permission sought under sub-section (2) shall be final.

3. (1) A producer, who contravenes any of the provisions contained in section 2, shall be punishable with fine equivalent to the expenditure involved in the production of the length of film beyond the stipulated length as provided in section 2.

(2) The Central Government may, at its discretion, ban the exhibition of a film produced in contravention of any provision of this Act or may reduce its length to 10,000 feet to enable it to be exhibited. 5

## STATEMENT OF OBJECTS AND REASONS

The main object of introducing this Bill is to restrict the length of the Indian films to a reasonable limit and thus avoid wastage of celluloid and save a lot of foreign exchange.

This will also help to raise the standard of our films, as there will be greater stress upon the main theme than on superfluous scenes in the films.

NEW DELHI;

RAMESHWAR TANTIA.

*The 21st August, 1962.*

## BILL NO. 93 OF 1962

*A Bill further to amend the Delivery of Books and Newspapers (Public Libraries) Act, 1954.*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

Short title  
and extent.

1. (1) This Act may be called the Delivery of Books and Newspapers (Public Libraries) Amendment Act, 1962.

(2) It extends to the whole of India except the State of Jammu and Kashmir. 5

Amendment  
of section 2.

2. In clause (a) of section 2 of the Delivery of Books and Newspapers (Public Libraries) Act, 1954, after the words "printed or lithographed", the words "and phonograph discs popularly known as gramophone records" shall be inserted. 27 of 1954. 10

## STATEMENT OF OBJECTS AND REASONS

The old records of recitations, speeches and music by Rabindranath Tagore, Mahatma Gandhi, Faiz Khan, R. C. Boral and other illustrious persons and musicians are fast depleting as no copy of these records is preserved. There is no provision in the existing Act for delivering copies of these records to Government for preservation. These are national treasures and must be protected at all costs from destruction. This Bill seeks to achieve this purpose by making the delivery of gramophone records to the National Library and other public libraries obligatory.

NEW DELHI;

C. K. BHATTACHARYYA.

*The 29th August, 1962.*

## BILL No. 74 OF 1962

*A Bill further to amend the Constitution of India*

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

Short title  
and com-  
mencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 1962.

(2) It shall come into force at once.

Amendment  
of article  
136.

2. In article 136 of the Constitution, after clause (2) the following clause shall be inserted, namely:—

“(3) Nothing in clause (1) shall apply to any judgment, decree, determination or order passed or made by any court or tribunal constituted by or under any law relating to election to either House of Parliament or to the House or either House of the Legislature of a State save as provided for by or under any law made by the appropriate Legislature in this respect.”

Amendment  
of article  
226.

3. In article 226 of the Constitution, after clause (2) the following clause shall be inserted, namely:—

“(3) Nothing in this article shall be deemed to confer on a High Court powers to issue to any authority as may be provided under sub-clause (b) of article 329 any directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* or any of them for the enforcement of any rights other than the rights conferred by Part III save as provided for by or under any law made by the appropriate Legislature in this respect.”

4. In article 227 of the Constitution, after clause (4) the following clause shall be inserted, namely:—

Amendment  
of article  
227.

“(5) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to election to either House of Parliament or to the House or either House of Legislature of a State save as provided for by or under any law made by the appropriate Legislature in this respect.”

5. In article 228 the following proviso shall be added, namely:—

Amendment  
of article  
228.

“Provided that nothing in this article shall be deemed to confer on a High Court powers to withdraw any case from any authority as may be provided under sub-clause (b) of article 329 save as provided for by or under any law made by the appropriate Legislature.”

6. In article 329 of the Constitution, after sub-clause (b) the following sub-clause shall be added, namely:—

Amendment  
of article  
329.

“(c) No court shall entertain any appeal, revision, writ application or other proceeding of any nature whatsoever against any order passed by any such authority as may be provided under sub-clause (b) of this article save as provided for by or under any law made by the appropriate Legislature.”

## STATEMENT OF OBJECTS AND REASONS

The scheme of Part XV of the Constitution was framed with the intention that electoral matters should not be questioned in any court and that the election to either House of Parliament or to the either House of the Legislature of a State shall not be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

It is the sole right of the Legislature to examine and determine all matters relating to the election of its own members and it was with this idea and under the scheme of Part XV of the Constitution that the Representation of the People Act, 1951 made elaborate provisions about the constitution of Election Tribunals to deal with election cases. In the original Act there was no provision of any appeal against the order of the Tribunal. Decisions of Election Tribunals were declared to be final and conclusive.

But the High Courts under other provisions of articles 226, 227 and 228 and the Supreme Court under the provisions of articles 132 and 136 entertained appeal, revision, writ application or other proceedings against the order of the Election Tribunals.

All these have led not only to undue delay in disposal of election disputes, but the intention of the Constitution makers in providing special authority for the speedy trial of election petition and thus excluding the jurisdiction of courts in electoral matters, has not met with success.

The Bill is intended to exclude the jurisdiction of High Courts and the Supreme Court in election disputes save as provided for by or under any law made by the appropriate Legislature.

NEW DELHI;

SHREE NARAYAN DAS.

The 4th April, 1962.

M. N. KAUL,  
Secretary.